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Deliberation and Bargaining in the Article 113 Committee and the 1996/97 IGC Representatives Group

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Introduction

A growing number of works in European Integration Studies emphasises the (potential) relevance of deliberation/communicative action in European policy-making.¹ While only few studies have addressed deliberation *in the Council framework* – which is surprising given the latter’s centrality in EU decision-making – the Council system appears to be rather conducive for the development of discursive processes due to dense patterns of socialisation and the existence of deep-seated common norms and values.² As the study of deliberation progresses, we are increasingly facing complex methodological and empirical questions: how can we identify deliberation and how can we distinguish it from other action modes such as bargaining? Closely related, how can deliberative processes be substantiated empirically? When and under what conditions can we expect deliberation in the Council framework to take place? And finally, how much deliberation can we expect in the Council framework?

This chapter seeks to address the above questions. I will do so by analysing the negotiating style along two broader cases studies: (a) EU negotiations in the Article 113 Committee on the 1997 WTO Basic Telecommunications Agreement, and (b) negotiations in the 1996-97 IGC Group of Representatives on the scope of the Common Commercial Policy. By looking at different stages of these negotiations and also by examining areas of differing political salience, varying distributions of conditions relevant for the occurrence of deliberation can be captured and compared. I will proceed as follows: first, I briefly introduce and define my notion of deliberation and other key concepts; second, I specify indicators for deliberation, my hypothesised conditions for deliberation as well as research techniques and methods; subsequently, the methodological

I wish to thank Daniel Naurin, Helen Wallace and two reviewers for their valuable comments on an earlier draft.

¹ See for instance Eriksen and Fossum (2000) and Risse-Kappen (1996) for two prominent examples.

² On dense socialisation and deep-seated norms in the Council framework see e.g. Lewis (1998), Niemann (2006a: ch. 2).

signposts established in part II are squared with my empirical data regarding the Article 113 Committee and the 1996-97 IGC Representatives Group in parts III and IV.

I. Deliberation and bargaining: conceptualisations and definitions

The notion of bargaining – commonly equated with ‘strategic action’ (cf. Elster 1991) – has been drawn upon to describe a considerable spectrum of interaction processes. More ‘distributive’ (or ‘harder’) forms of bargaining assume actors who seek to maximise their self-interests. Preferences are generally viewed as stable. Parties that engage in ‘hard’ bargaining behave cooperatively only as long as negotiations correspond to their individual interest calculus. Parties will only accept an agreement that increases their utility compared to no agreement, but they may prefer an agreement in which they gain more relative to other parties. ‘Hard’ bargaining behaviour typically includes concealing information, misleading other parties, as well as using threats and promises (cf. Schelling 1960). ‘Integrative’ or ‘softer’ forms of bargaining (cf. Walton and McKersie 1965) put emphasis on the pursuit of common interests rather than exclusive self-interests. The focus is on mutual, absolute benefits, in contrast to relative gains as in more hard bargaining accounts. While ‘distributive’ bargaining is characterised by zero-sum games, ‘integrative’ bargaining attempts to convert negotiations to non-zero-sum games. More ‘integrative’ forms of bargaining include mutual concessions, paying rewards for concessions or increasing scarce resources (Pruitt 1983).

My notion of deliberation is based on Habermas’s concept of communicative action. In communicative action, participants are not primarily oriented to achieving their own individual success; they pursue their individual objectives under the condition that they can coordinate or harmonise their plans of action on the basis of shared definitions of the situation. Thus, behaviour is not co-ordinated via egocentric calculations of success but through acts of reaching mutual understanding about valid behaviour (Habermas 1981: 385-6). In order to achieve this type of understanding certain ‘validity claims’ have to be fulfilled. Habermas distinguishes between three validity claims: first, that a statement is true, i.e. conforms to the facts; second, that a speech act is right with respect to the existing normative context; and third, that the manifest intention of the speaker is truthful, i.e. that s/he means what s/he says (Habermas 1981: 149). Communicative behaviour which aims at reasoned understanding counterfactually assumes the existence of an ‘ideal speech situation’, in which nothing but the better argument counts and actors attempt to

convince each other (and are open to persuasion) with regard to the three types of validity claims. If a listener doubts the validity of a statement, the speaker must explain himself and come up with reasons which are questionable in a rationale discourse. By arguing in relation to standards of truth, rightness and sincerity, agents have a basis for judging what constitutes reasonable choices of action, through which they can reach agreement (Habermas 1981: 149). While in bargaining ‘learning’ (as far as this term is appropriate here) is incentive-based and manifests as the adaptation of strategies to reach basically unaltered and unquestioned goals, deliberation aims at more deeply-rooted, reflexive learning, i.e. changed behaviour as a result of challenged and scrutinised assumptions and objectives.

My notion of deliberation is a rather narrow one, based on a ‘pure’ communicative rationality or ‘thick’ Habermasian thinking. It can be distinguished from that of other authors who use a wider (and less pure) conception and suggest that deliberation/arguing may also be strategically motivated (cf. Joerges and Neyer 1997; Gehring 1999). I argue that non-strategic communicative rationality does exist and its analysis would be impeded (and become somewhat indistinguishable from concepts like ‘rhetorical action’) using wider and less clear-cut conceptual lenses. A variation of strategically motivated arguing is the notion of rhetorical action (Schimmelfennig 2001). Here, actors whose self-interested preferences are in line with certain prevailing norms can use these argumentatively to add cheap legitimacy to their position and delegitimise the position of their opponents. Whereas purely communicative actors attempt to reach reasoned understanding, rhetorical actors seek to strengthen their own position strategically and are not prepared to be persuaded by the better argument.

To sum-up: while policy-makers *coerce* or *haggle* in ‘hard bargaining’, they *trade-off*, *compensate*, or *concede* in ‘integrative bargaining’, and *use norms opportunistically to add cheap legitimacy* in ‘rhetorical action’. In contrast, in ‘deliberation’ they *argue*, *reason*, *discuss*, *debate* and *persuade* (all in a non-strategic way) regarding what constitutes valid behaviour according to shared standards of truth, rightness and sincerity.

II. Methodology

Working with a ‘pure’ notion of deliberation brings about substantial methodological challenges. First, scholars working with concepts such as communicative action have been criticised for insufficiently spelling out the conditions under which deliberation can be expected to occur and

impact on outcomes (e.g. Keck 1995). Progress has been made in that respect in recent years. While there is quite some overlap on these conditions among scholars, there is also a non-negligible area of disagreement.³ For devising the hypothesised conditions below, I have drawn on my own prior work (Niemann 2000, 2004, 2006a) and the findings of related research (see references below). In general, the subsequent conditions should be regarded as approximations, and more importantly, as properties that condition choices and actions, rather than mechanical devices that click-start deliberation. Some of my hypothesised conditions are interrelated and partly overlap.

Conditions for deliberation to take place and impact on preferences⁴

Condition 1: New problems and uncertain situations: When actors face new problems or experience uncertain situations, they are motivated to analyse new information, consider different views and learn. They are particularly inclined to enter into deliberative processes since truth-seeking is essential under such circumstances (Checkel 2001: 562; Risse 2000: 19). There are several indicators for this condition. First, it is likely to be present when (specific) issues have not been analysed, reflected and discussed by negotiators. Second, uncertainty can, to a large degree, be ascertained by the degree to which actors have become clear about their interests and defined their preferences concerning the issue at hand.

Condition 2: Cognitively complex issues: The more technical the negotiated topic, the more expert knowledge is required, the more discursive inquiry is necessary and the more validity claims about what constitutes the right basis for appropriate action have to be made (Elgström and Jönsson 2000; Haas 1992). Yet, for an argumentative debate *on complex issues* to be possible, negotiators also need to have the requisite expertise to evaluate each others' validity claims (Niemann 2006a). In other words, issue-complexity may only foster deliberation if it is accompanied by a certain issue-expertise. The degree of issue-complexity has been judged by the

³ For example, while Deitelhoff and Müller (2005) regard publicity conducive to arguing, Checkel (2001) and myself (Niemann 2004, 2006b) have suggested that insulation and in camera settings contribute to persuasion/communicative behaviour.

⁴ In some of my previous work I also specified two additional conditions: 'the existence of a strongly shared lifeworld' and 'persuasive individuals'. These two conditions have been dropped here. The latter because 'persuasive individuals' are not so easily squared with a thick Habermasian notion of deliberation, in which the force of the better argument is decisive. The former because the variation in shared lifeworlds is not that substantial in the Council framework and can thus not convincingly explain different outcomes.

extent to which an issue required pertinent technological, legal and economic expertise. Issue-expertise has been determined by ascertaining the background and relevant experience of the negotiators. As interviewees were likely to overstate on the above (especially regarding their own expertise), I verified the statements made through cross-interviews.

Condition 3: The possibility for lengthy discussions: In many negotiations overloaded agendas limit the time available for formal or informal discussion of issues, to the extent that truth-seeking becomes very difficult (Niemann 2000, 2006a). For an argumentative discussion to take place or a reasoned consensus to emerge, time is required, e.g. for laying down arguments, for challenging arguments, for counter-challenges and for reflection. Referents for this condition are more clear-cut and more easily measurable, i.e. the time available for discussion during formal meetings (in the Council/IGC framework) and, in addition, the time spent on the respective issue informally (e.g. in the margins of a meeting, over lunch or through bi-lateral communications).

Condition 4: Weak / only moderate countervailing pressures – low levels of politicisation: Deliberation may be crucially obstructed when negotiators face strong pressure from outside sources (domestic or international). When issues are strongly politicised, negotiators are less likely to seek understanding about valid behaviour, as they are pressurised to satisfy certain vested interests. In addition, more private, insulated settings are regarded as conducive to truthful arguing (Checkel 2001: 563) because negotiators need to worry less about the (immediate) reactions of certain constituencies or principals and tend to find it easier to retreat from initial assertions when confronted with superior evidence (Stasavage 2004) or better arguments. To approximate the degree to which condition 4 has been present, I looked at a number of criteria: first, the degree to which (key) officials in lead departments could be carried along in the deliberative process in Brussels, and/or restricted the scope for deliberation (e.g. by giving very narrowly-defined instructions to their Brussels negotiators); second, the extent to which domestic (or international) pressures restricted the scope for deliberation of Brussels agents through (direct) demands, for example from interest groups or political parties; finally, the degree to which the negotiations were exposed to media and public attention.

Two further aspects regarding the hypothesised conditions need to be addressed: first, what is the nature of the hypothesised conditions (i.e. are they ‘conductive’, ‘necessary’, or sufficient) and are

they all equally important? I assume that these conditions are all conducive to deliberation, and that – taken together – they are sufficient for communicative action. However, I attempt to be more specific: following from my prior work (e.g. Niemann 2006a) and starting from a ‘multiple causality assumption’⁵, I hypothesise that condition 4 (weak countervailing pressures/low levels of politicisation), condition 3 (possibility for lengthy discussion) and one out of the first two conditions (uncertainty and issue complexity) are necessary. The underlying assumption here is that for deliberation to occur, we need two things: an incentive (conditions 1 and 2) and time/room for development (condition 3 and 4). Both ‘uncertainty/new problems’ and ‘issue complexity’ can give an incentive to engage in truth-seeking (hence only one of them is necessary). Once the incentive for deliberation is assured, time *and* space is needed for its cultivation and development. Therefore, I presuppose that both condition 3 and 4 are necessary. Condition 4 seems to be the more important of the last two ones, not least because it is relatively broadly defined. From the above also follows that none of my hypothesised conditions by itself is sufficient.

Second, it is apparent from the above stipulation of conditions and indicators that some of these are not easily identifiable and clearly measurable. This goes especially for the first two conditions and for indicators such as the requirement of relevant expertise. This constitutes a shortcoming; one with which scholars working on socialisation and deliberation typically struggle. But it is also a question of epistemological stance/conviction. I acknowledge the importance of interpretative and contextual features in establishing causal relationships and (middle-range) generalisations. Hence, I view interpretative understanding as an inherent, even though not exclusive, part of (and step towards) causal explanation (cf. Weber 1949: 88).

Indicators for deliberation

How does one recognise communicative action when one sees it? And, perhaps more importantly, how can one distinguish it from bargaining, and – more intricately – rhetorical action or other forms of strategic arguing? To substantiate the existence of a non-strategic communicative rationality at work in (real life) EU negotiations implies a substantial methodological challenge. Moreover, genuine deliberation and hard bargaining are ideal types,

⁵ I.e. that different combinations of values on the conditions can lead to the same/similar outcomes (Cf. King *et al.* (1994: 87-9).

which do not often appear in their pure form (Elster 1991). As different interaction modes may appear in very short intervals (or even simultaneously), it has been suggested that an analysis of individual speech acts would be required to distinguish between action modes (Holzinger 2001). The enormous time resources necessary for such an inquiry would limit any analysis to short sequences. Alternatively, I argue that it is possible to ascertain the prevalence of a certain action mode for (somewhat longer) periods of negotiations by (1) concentrating on the main arguments; (2) focusing on (only) several (important) actors; (3) analysing the extent to which the main arguments were used communicatively/strategically by the these actors; (4) focusing particularly on instances of preference change and analysing which arguments fostered this change.

For the purpose of distinguishing deliberation from strategic forms of arguing, several indicators have been developed. First, as pointed out by Risse (2000: 18) arguments in communicative action mode are not based on hierarchy or authority. Pointing to status, rank or qualification to make an argument, does not qualify as discourse. Second, the assertion that persuasion has really taken place, i.e. that learning processes resulting from argumentative debate have occurred, gains further substance when what has been learned is used or applied. Hence, when negotiators use arguments by which they have been persuaded – especially when used to convince their administrations back home (cf. Lewis in this volume) – they are likely to have been truly convinced. It should be verified however that the applied arguments are not used strategically/rhetorically, for instance to seek support from the ‘winner’ after a ‘lost’ bargain by copying the winner’s arguments. Third, by reconstructing actors’ (true) underlying motivations one can determine more easily whether negotiators’ arguments are sincere (i.e. communicative) or rhetorical. The analysis of actors’ motivations also helps us ascertain the broad mode of interaction. For example, if negotiators are generally motivated by norms (rather than material interests), we can (tentatively) exclude bargaining and infer elements of communicative rationality, as norms attain validity through learning processes and consensus and cannot be haggled (cf. Holzinger 2001: 271). Finally, I have explored alternative explanations. Indicating the irrelevance of powerful alternative explanations would strengthen the rationale for deliberation. Potential alternative explanations of preference change considered here are (i) threats and coercion à la hard bargaining; (ii) Logrolling, cost-cutting or side-payments à la integrative bargaining; (iii) rhetorical action; (iv) domestic political pressures, for example, from domestic industries.

Process tracing and triangulation across multiple data sources

Process tracing is usually understood as a method for the analysis of causal mechanisms, which carefully traces events, processes and actors' beliefs and expectations (George and McKeown 1985). On a more general level, it is viewed as a method that establishes a link between cause and effect beyond the level of correlation by appealing to knowledge of the real structures that produce observed phenomena (Dessler 1991). More specifically, process tracing is seen as a method for analysing the relationship between actors' cognitions and their behaviour. Process tracing has been put into practice through four different techniques. First, about 65 non-attributable semi-structured interviews⁶ have been conducted with members of the Article 113 Committee, the IGC Representatives Group, (other) national and Community officials involved in the negotiations, and representatives from industry. Second, I used specialist publications, official documentation and major media. Third, due to a four months placement at the Council Secretariat, I was able to witness fifteen sessions of the Article 113 Committee (at different levels) and several informal meetings as a participant observer. Finally, during my internship I had access to confidential documentation (including informal evaluations and outcomes of meetings' proceedings).

Comparative method


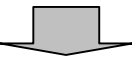

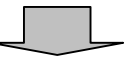
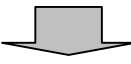

My analysis should be viewed as a plausibility probe, rather than a rigorous test of the hypothesised conditions. To further probe the relevance of my hypothesised conditions, the comparative method has been used. The goal of my comparative analysis has been to identify the differences (in terms conditions) responsible for varied outcomes (in terms of interaction mode). When looking at cases where the level of communicative action varied, higher levels of deliberation should be accompanied by a stronger presence of each/the condition(s) for communicative action, while lower levels of deliberation should correlate with a reduced presence of my conditions. Those conditions changing as hypothesised are thus supported, whereas those conditions remaining constant or changing in the direction opposite to the one

⁶ The non-attributable interviews have been coded as follows: "EC" refers to interviews conducted in the Community institutions (including the Council Secretariat) and "NAT" refers to interviews with representatives of national governments/administrations.

hypothesised are challenged in terms of their causal salience (cf. Ragin 1987).

Table 1 indicates how conditions vary across the different sub-cases. Given the favourable conditions regarding the pre-negotiations of the Basic Telecoms Services Agreement in the Article 113 Committee (sub-case 1), this sub-case is hypothesised to be the only one dominated by deliberation. Given the partial presence of the conditions for communicative action, sub-case 2 and 4 should be characterised by a mix of different action modes, including deliberation, rhetorical action, ‘integrative bargaining’ and hard bargaining, while the (near) absence of favourable conditions should lead to negotiations dominated by strategic action in sub-cases 3 and 5.

Table 1: Variation of conditions among sub-cases with expected outcomes

Sub-cases Conditions	(1) BTA: EU pre-negotiations (113 Committee)	(2) BTA: revision of 1st EU offer (113 Committee)	(3) BTA: finalising the EU offer (113 Committee)	(4) IGC 1996/97: CCP pre-negotiations (IGC Rep Group)	(5) IGC 1996-97: CCP negotiations (IGC Rep Group)
Condition 1: new problems and uncertainty	Present	Partly present	Largely absent	Largely present	Largely absent
Condition 2: cognitively complex issues / requisite expertise	Present	Partly present	Largely absent	Partly present	Largely absent
Condition 3: (possibility of) lengthy discussions	Present	Largely present	Largely present	Partly present	Largely absent
Condition 4: weak counter-pressures / low politicisation	Present	Partly present	Largely absent	Largely present	Largely absent
					
Expected Outcome	Dominated by deliberation	Mix of deliberation and strategic action	Dominated by strategic action	Mix of deliberation and strategic action	Dominated by strategic action

III. The Article 113 Committee and negotiations of the BTA⁷

In the General Agreement on Trade in Services (GATS), states had made commitments to remove most restrictions on national treatment and market access concerning *value-added* telecommunication services, such as voice mail and electronic mail. The negotiations on *basic* telecommunications services were deferred until after the conclusion of the Uruguay-Round, eventually leading to the WTO Basic Telecommunications Services Agreement (BTA) in February 1997. In the EC/EU framework, pre-negotiations on a WTO basic telecoms services agreement began in late April 1994, more than one year before formal negotiations on the substance of the first official EU offer took place. In the liberalisation talks, basic telecommunications services were treated as including all major sub-sectors, on a facilities and a resale basis, both wireline and wireless. The general goal of the negotiations at WTO level was to reach a critical mass of offers, so that participants in the negotiations would be prepared to open their national markets by eliminating domestic monopolies and foreign ownership restrictions.

My analysis concentrates on the exchanges and discussions in the Article 113⁸ Committee. This body was established as part of the decision-making framework for the EC's Common Commercial Policy. Although formally it has only consultative function, it is accepted that the Article 113 Committee advises the Council and takes part in shaping the Community's commercial policy (cf. Johnson 1998). The Committee is made up of two levels, the Full Members and the Deputies. While the former are responsible for overall policy, the latter tend to deal more with the nuts and bolts issues. The Article 113 Committee has increasingly set up sub-committees to deal with specialised issues, such as the Article 113 Services Committee.

My analysis confines itself to the more decisive sequences concerning the formation of common EU positions and negotiating offers: first, I will look at the influential pre-negotiations (sub-case 1), followed by the revision of the first EU offer concerning restrictions on non-EC investment (sub-case 2), and the finalization of the revised EU offer: the reduction of Spain's restrictions (sub-case 3).

⁷ This section draws on the empirical part of Niemann (2004, 2006b).

⁸ The former Article 113 Committee is now called the Article 133 Committee, since the renumbering of articles following the Amsterdam Treaty. As negotiations on the BTA took place before this change, the committee in question will be referred to as the Article 113 Committee here.

Pre-negotiations (sub-case 1)

The negotiating style during the (intra-EU) BTA pre-negotiations is most aptly captured by deliberation. Communicative action processes fostered preference changes on the part of those delegations that were rather sceptical of far-reaching liberalisation at the outset, namely Spain, Portugal and Greece, and also (but not quite as sceptical) France, Belgium, Ireland and Luxembourg. On the other hand, the Commission, the UK, Denmark, the Netherlands and, to a lesser degree, Germany supported very far-reaching WTO liberalisation, joined by Sweden and Finland after enlargement in 1995.

During the pre-negotiations the conditions for deliberation were considerably favourable. As for *condition 1*: despite the fact that basic telecommunications had already been discussed, to some extent, during the Uruguay Round, there was still substantial uncertainty concerning the evolution of the telecoms sector and the potential repercussions of WTO-level liberalisation. National preferences and positions were still largely in the forming stages. In that process officials sought additional information and knowledge in order to better assess the approaching issues (Interview EC-3, Brussels, 1997). And this made them open-minded and communicative actors. As one participant of the Article 113 Services Committee acknowledged ‘at this stage most of us had to find out more about the problems at hand and become clear about our [delegations’] interests. In such a situation we were open for new information, share knowledge, and seriously consider each others’ arguments’ (interview NAT-2, Brussels, 1997).

In the pre-negotiation stage, the issues under discussion were usually cognitively complex (*condition 2*). Debate in the Article 113 (Services) Committee involved issues like the role and salience of internet telephony, ‘call-back’ services and interconnection.⁹ These issues required technological, economic and legal expert knowledge. One observer associated to the Full Members Committee noted that ‘many of the basic telecoms issues discussed [...especially at that stage...] were not so easy to grasp and comprehend for trade policy generalists’ (interview NAT-6, Brussels 1997). The complexity of the issues fostered deliberative processes. As one official remarked, ‘because the points we talked about were sometimes hard to fathom, our emphasis was often to clarify how things worked, what the likely impact of certain measures were and what was factually correct.

⁹ Interconnection refers to the establishment of electronic linkages between service providers so that they can conduct business transactions electronically. On internet telephony and ‘call-back’, cf. the following footnote.

This was not the time for bargaining or hidden agendas, but for fact-finding and open discussions' (interview NAT-1, Brussels 1997). That negotiators had the requisite expertise to engage in such processes has been suggested by the national committee representatives, and also by more neutral observers administering the talks (interview EC-6, Brussels 1997).

The time available for discussion was considerable (*condition 3*). The main thrust of the intra-Community pre-negotiations concerning the BTA took place in the Article 113 *Services* Committee. Deliberations on this issue typically lasted over an hour during each meeting. Formal meetings usually took place three to four times per months, usually preceded by an informal meeting the day before. In addition, there were informal talks on the issue on other occasions, e.g. in the margins of meetings, over lunch or through other bi-lateral contact. This is very substantial compared with (the agendas of) other more senior committees. As one participant of the Article 113 *Services* Committee noted, 'we had enough time to ask substantive questions, give detailed explanations and engage in a thorough discussion. If there was insufficient time for something during a meeting, I could always clarify or continue it, in the break, over the phone, or in the next informal meeting' (interview NAT-9, Brussels 1997).

As far as *condition 4* is concerned, discussions were characterised by a lack of politicisation that could have countered deliberation. The pre-negotiations can be depicted as an insulated, private setting, where existing domestic constituencies could not (yet) come to the fore. The pre-negotiations received virtually no media attention and direct domestic pressures from organised interests were practically absent (interview EC-8, Brussels 1997). Finally, lead departments also played no countervailing role. During the pre-negotiations, some national ministries in charge of the negotiations domestically even encouraged their member of the Article 113 *Services* Committee to sound out the Commission and other Member States in order to attain more knowledge and information. The instructions given by lead departments to the members of Article 113 Committee were not tight or restrictive (in terms of limiting the scope for deliberation), partly because they already contained a substantial Brussels element (cf. Lewis 1998: 491) and were thus not going against the gradually emerging reasoned understanding.

In their attempt to define the issues involved in international basic telecommunications liberalisation, delegations gradually began to enter into an argumentative exchange. The position of the less enthusiastic delegations was based, to some extent, on the assumption that liberalisation on the international level could be held

back by political means. These delegations put forward three main arguments: first, it was asserted that telecommunications were so fundamental to the functioning of an economy and touched on so many political interests that the state needed to retain a certain control over its telecommunications. Second, some officials still held the view that economies of scale would reduce costs, especially regarding the provision of local physical networks. Thirdly and less frequently, it was argued that with strong international competition, national operators would tend to lose market share, in economies with lesser developed telecommunications services (cf. Shears 1997).

The more liberal delegations' reasoning directly undermined important aspects in the conservatives' argumentation and assumptions. They pointed to the vast technical progress taking place, for example, through the further development of 'by-pass' services.¹⁰ This would make any sort of protectionist legislation inhibiting such activities very difficult and hence *de facto* liberalisation hard to escape in the medium to long-term (Gonzalez-Durantez 1997: 137). Second, it was argued that falling costs of installing wired networks and the increasing significance of wireless communication would undermine the cost cutting rationale of economies of scale for physical infrastructure (interview EC-26, by telephone 1999). Third, free trade and open markets would constitute appropriate economic policy since it would lead to greater economic efficiency and welfare. Fourth, it was asserted that Member States had already accepted the principle of liberalisation at Community level. Opening markets to non-EU third countries thus merely constituted an extension of that logic. Finally, it was held that the Community's free movement doctrine would make it difficult for individual Member States to prevent third country service suppliers *once* the single market in telecommunications was in place, because a service can easily be traded across the internal frontiers of the single market.

The more sceptical delegations gradually changed their mind and increasingly began to concur in the liberal delegations' arguments during the course of the pre-negotiations. The result of this deliberative process was a nearly general, liberal consensus amongst officials in the 113 Committee, although delegations had not talked much about concrete offers (cf. Council 1995). The pre-negotiations led to a modification of general

¹⁰ Some countries allowed telecommunications firms to resell capacity to other firms, thereby making these countries cheap hubs for international traffic. "Call-back" services let consumers in countries with high telecommunications rates telephone abroad to inexpensive local/national rates. Moreover, digital technology, such as the internet, allows users to by-pass traditional voice-telephone networks (The Economist 22/2/97).

expectations and influenced the subsequent broader discourse and negotiations on more specific issues. An (implicit rather than explicit) understanding was reached that a far-reaching EC offer should be tabled in the forthcoming negotiations, including a swift opening of markets with only few exceptions. As pointed out earlier, deliberation and bargaining are ideal types which do not often appear in their pure form. In the pre-negotiations actors often used a *melange* of genuinely communicative as well as rhetorical arguments. However, my evidence suggests that the arguments presented above were, on the whole, made with the intention to lead a reasoned discussion concerning valid behaviour. The case of (primarily) deliberation can be substantiated as follows:

(I) *Evidence from structured interviews*: During a first and second series of interviews a number of officials characterised the pre-negotiations in terms of communicative rationality *without being prodded* (interviews EC-2, NAT-3, NAT-9, Brussels 1997). In a third small series of more structured interviews, in which three different categorizations (“arguing/reasoning”, “bargaining”, “confrontation/compulsion”) were proposed to officials who were not interviewed before, it was consistently suggested that arguing captured the mode of interaction during the pre-negotiations most appropriately. Bargaining and compulsion were judged by most observers as largely absent.

(II) *Negotiators’ underlying motivations*: The case for deliberation can be further strengthened by reconstructing actors’ underlying motivations. These were traced through interviews with Committee members. Interviews with their colleagues in capitals, meeting summaries, position papers, and, on occasion, participant observation, have been used for *cross-checking*. My findings suggest that actors were generally motivated by normative concerns: (moderate) protectionism/state interventionism guided expectations regarding appropriate policy in the conservative delegations, whereas ‘free trade’ and ‘neo-liberal economic’ norms mainly drove behaviour in the liberal delegations. In addition, liberal negotiators regarded themselves as experts and sought to demonstrate their expertise (interviews EC-10, Brussels 1997; NAT-28, Brussels 1999). A third motivation was concern for maximising self-utility, here mainly in terms of their national economy. This motivation came out significantly weaker compared with normative concerns or expert-guided behaviour. Negotiators have attributed their relatively low ‘national interest’ motivation during the pre-negotiations mainly to relatively weak politicisation pressures (*condition 4*), new problems and uncertainties

(*condition 1*), and the complexity of issues (*condition 2*), as a result of which 'material self-interests were still in the formative stages and thus mattered less in our motivations (interview NAT-2, Brussels 1997). The pre-negotiations thus constituted a conflict of norms and a conflict of facts, rather than a conflict of interests. Both norms and facts cannot be bargained (or traded). Norms attain validity through consensus and common convictions. Facts need to be verified or enriched with new knowledge (Holzinger 2001: 271).

(III) *Non-hierarchical argumentation and the avoidance of adding cheap legitimacy:* The case of deliberation is further supported by the non-hierarchical manner in which arguments were put forward. Negotiators generally refrained from pointing to their rank, status or qualification when making their arguments, and thereby avoided adding cheap authority to their statements. They also avoided adding cheap legitimacy to their arguments more generally. For example, as for the single market argument, market-liberal negotiators held that the preclusion of third country service suppliers would become difficult to maintain *only when* the internal market in telecommunications *was in place*. They did not portray the single market as having instantaneous implications. Neither did they describe the impact of technological change in such a manner. They refrained from suggesting that there was little choice but fast liberalisation, which might have put the more conservative countries in a vulnerable negotiating position. Instead, they depicted these developments as bringing about *de facto* liberalisation in the medium to long-term only (cf. Gonzalez-Durantez 1997: 137).

(IV) *The application of what has been learned:* Learning processes resulting from deliberation are further substantiated when what has been learned is used or applied. When negotiators start to use lines of reasoning (in a non-rhetorical manner), by which they have been persuaded, they are likely to have been truly convinced. Such processes could be identified, for instance, with regard to the Luxembourgian or Irish delegations, which had not been convinced of the implications of technological change at the start. However, after some time they began to acknowledge the strength of that argument and later fully concurred on this point (interview NAT-8, Brussels 1997). Eventually, they also joined in reasoning along very similar lines in the 113 Committee. That this move was not rhetorical has been asserted by the negotiators in question and also corresponds to the judgments of close colleagues in national capitals who should have been able to detect strategic behaviour. In fact, in their communications with the colleagues back home, the respective members of the Article 113 Committee had also begun to use the

‘technological change’ argumentation in an effort to convince them of this rationale (interviews NAT-11, NAT-12, Brussels 1997).

(V) Exploring alternative explanations: The limited plausibility of alternative explanations during this stage of the negotiations further strengthens the rationale for deliberation. First, swapping concessions or pay-offs à la integrative bargaining played no role. Negotiators were still in the process of analysing their interests and forming positions. Hence, there were no (or only few) horses to trade, yet. And, pre-negotiations were mostly a dispute about facts and norms, which cannot be traded as pointed out above. The one-sidedness of ‘persuasion’ makes rhetorical action as well as threats or coercion more plausible alternative explanations. However, the afore-mentioned evidence has weakened the case for rhetorical action. Coercion or threats were judged absent by interviewees. Arguments concerning the single market rationale and technological progress were neither meant, nor used, as disguised threats (cf. Niemann 2004: 396-397). A final alternative explanation for preference changes would be pressures from domestic industry. The problem with this explanation is that domestic telecoms industries remained rather uninvolved (interview EC-11, Brussels 1999; Niemann 2004: 396).

Revision of the first EU offer (sub-case 2)

Following the first EU offer of October 1995, intra-EU negotiations focused on potential changes to that offer which included a number of restrictions to competition, most prominently restrictions concerning non-EC investment in Spain, France, Portugal and Belgium. The prevalence of deliberation now began to change. This change was accompanied by altered conditions concerning the negotiating environment. Perhaps most importantly, countervailing pressures from national capitals started to emerge. As processes of deliberation, in some instances, failed to trickle through capitals, national officials who do not attend the Article 113 Committee could not be carried along in the process (*condition 4*). In addition, the scope for deliberation in the 113 Committee was more restricted due to more narrowly defined instructions given to the members of the committee by national capitals.

As a result of the growing importance and politicisation, the Full Members Committee increasingly took charge of the negotiations, to the ‘detriment’ of the Services

Committee. Issues remained cognitively complex, but the Full Members sometimes lacked the required expertise to conduct a sensible reasoned debate about valid behaviour, which adversely affected *condition 2*. As one Full Member admitted ‘quite frankly, often we lacked the necessary background knowledge to have a meaningful discussion about the pros and cons of. Then, we mostly read out the pre-prepared briefs and exchanged positions, without much interactive debate’ (interview NAT-6, Brussels 1997). In terms of the novelty of problems and the level of certainty, the negotiations had become more settled and foreseeable. Delegations had gradually identified their preferences and formulated positions. This adversely affected *condition 1*. As one observer noted, ‘people did not have to engage in fact-finding and clarifying information to the same extent. As a result, they were less open for new information and less inclined to listen to their opposite numbers’ (interview EC-3, Brussels 1997).

With the 113 Full Members Committee taking more charge of the negotiations, the time available for relevant substantive discussion diminished (*condition 3*). Because of tight meeting agendas, the Full Member typically devoted (only) about 30-45 minutes to the issue in their monthly meetings (participant observation). The impact this had on discursive patterns is highlighted by one official: ‘rarely was there enough time to really get to the bottom of the matter. More often, I felt that – although there was time to go beyond the surface – we had to stop short of a more profound exchange of arguments’ (interview NAT-9, Brussels 1997).

Processes of arguing and deliberation were increasingly supplemented by elements of rhetorical action which became more and more widespread. For instance, when the Full Competition Directive of March 1996 specified the 1998 deadline for the internal telecoms market, the Commission started to use the internal market argument increasingly in a rhetorical manner, more and more framing the process as ‘immediate’ and ‘inescapable’ to put pressure on the more reluctant delegations. Rhetorical arguments were important in so far as they implied that the options of the remaining sceptical delegations began to narrow.

At this stage of the negotiations more explicit reference was made to the various (underlying) interests which had become clearer and more explicit by then. Forms of concession swapping, compensations or buying acquiescence also began to appear. For example France was ‘permitted’ to retain some restrictions in exchange for dropping others (WTO 1996). As a result of this mix of rhetorical and discursive arguments trickling down national administrations, along with tactics of swapping concessions and

side-payments, positions began to shift and the French, Belgian and Portuguese delegations removed (most of) their restrictions (Council 1996; interviews EC-5, Brussels 1997).

Finalising the revised EU offer: the reduction of Spain's restrictions (sub-case 3)

A crucial phase of the negotiations emerged in the autumn of 1996 when the EU set out to finalise its revised offer. The most significant hindrances for (the crucial) US acceptance of the EU offer were the restrictions to market access maintained by Spain. In Spain the BTA issue had become substantially politicised (*condition 4*). With the change of government in April/May 1996 increasingly strong fractions of the Spanish government and administration favoured a duopoly, as selling a second license promised to generate high revenues (interview NAT-13, Brussels 1997). The issue was no longer insulated and received quite some media attention (e.g. El País 10/10/1996; El Mundo 25/10/1996). That many officials in the ministries involved in Madrid could not be carried along and persuaded by the deliberative process leading to the nearly general liberal consensus in Brussels further weakened *condition 4*. Finally, the politicisation of the issue seems to have been further enhanced, as *Telefonica* took a more ambivalent stance at this stage, while it had favoured WTO liberalisation in earlier phases of the negotiation process.

Other conditions also became less conducive to deliberation. Uncertainty (*condition 1*) had further diminished. Positions and interests were particularly clear-cut here, as negotiators had, over time, become very familiar with the Spanish case (interview EC-6, Brussels 1997). Issues remained cognitively complex during the bilateral talks (*condition 2*). Yet, negotiators at the Minister/Commissioner level, where the talks now took place, were even less capable to deal with items in an argumentative way than the Full Members. They frequently lacked the required knowledge to make truth-seeking possible, as validity claims could not be adequately evaluated. (interview EC-8, Brussels 1997). More conducive to deliberation was the largely bi-lateral nature of that part of the negotiations, as a result of which the time available for discussions increased (*condition 3*). This, however, could not make up for the unfavourable three other conditions.

Spain continued to hold that the removal of foreign ownership restrictions would be detrimental to *Telefonica* and challenge Spain's national interest and thus maintained its

stance. The Commission reacted – to what was unambiguously perceived as strategic and non-cooperative action – by also assuming tougher bargaining tactics. A mix of threats/promises, trade-offs, and to a lesser extent rhetorical action can explain why Madrid eventually changed its position. DG I of the Commission was in close touch with DG IV, which was in charge of *Telefonica's* application for participation in the *Unisource* alliance of telecom operators. Under the EC's competition rules, the Commission has clearance powers over strategic alliances. It made use of these powers to increase its leverage over the Spanish government which strongly supported *Telefonica's* participation in *Unisource* (Sauter 1997). The Commission promised to clear the application, if Spain made substantial concessions in the WTO telecoms negotiations and implicitly threatened to withhold clearance in the absence of such a move. The Commission also contended that given US demands concerning Spanish commitments, the entire WTO basic telecommunications negotiations might fail due to Spain's reluctance to move. Eventually, Spain succumbed to the pressure and agreed to drop its market access and foreign ownership restrictions from November 1998.

IV. The 1996-97 IGC Representatives Group and negotiations on the extension of Article 113¹¹

Before the 1996-97 IGC, the scope of Article 113 (now 133), the centrepiece of the Community's Common Commercial Policy (CCP) had been disputed for some time. Most prominently, during the Uruguay Round the Commission and some Member States disagreed on who was competent on the 'new' trade issues, such as services and intellectual property rights. The Commission requested a ruling by the Court. In its Opinion 1/94, the ECJ ruled that both the Community and Member States were jointly competent to conclude international agreements in services and intellectual property rights (Bourgeois 1995). The Court left a number of other questions unsolved. For example, it demanded a duty of co-operation and unity of representation in matters where the Community and Member States are jointly competent, without however specifying how such unity was to be achieved. Against this background, the Commission decided to submit a proposal for an extension of Article 113 within the framework of the Amsterdam IGC, hoping to reach a more favourable outcome on the political level.

¹¹ This section draws on Niemann (2006a: ch. 3).

My analysis here concentrates on the exchanges and negotiations in the IGC Representatives Group, which prepared and discussed IGC issues before they went to Foreign Ministers and/or Heads of State and Government. It took up its work in January 1996 and worked together for one year and a half. The group comprised six ambassadors, four other senior officials, and five junior politicians.

Pre-negotiations (sub-case 4)

In late July 1996 the Commission put forward a proposal concerning the extension of Article 113 to include trade in services, intellectual property rights and investment (Commission 1996). There was no real or formal pre-negotiation period concerning the reform of Article 113 during the IGC. Yet, the first two and a half months of the talks on the CCP question resembled those of pre-negotiations. The conditions for deliberation were partly in place. There was a certain uncertainty on the very question of extending Article 113 (*condition 1*). Many Representatives had not dealt with the topic before. Thus, at the beginning many of them were eager to find out what the Commission had to say on the issue and also were not prejudiced on this question.

As for *condition 4*, the level of politicisation and countervailing pressures was relatively limited during this period. The issue received hardly any attention by the media which largely overlooked the Commission proposal for extending Article 113. Also, organised interests had not yet reacted on the issue, something that only marginally changed during formal negotiations (interview EC-8, Brussels 1997). There was scepticism in some capitals concerning an extension of Community competences, but national officials and politicians in capitals had had relatively little chance yet to influence the IGC Representatives on this question.¹²

When the topic was first introduced, a fair amount of time was allowed for discussion (*condition 3*). For instance, Commission Director-General for external trade, Horst Günter Krenzler, was given the opportunity to explain the Commission's case. This meeting lasted about an hour and 'left sufficient time for everyone to ask questions and challenge the Commission proposal, and for Mr Krenzler to respond and explain the rationales behind it, followed by a lively discussion' (interview EC-24, Brussels 1999). During two other Representatives meetings only 20-30 minutes were allocated to the CCP, and informal

¹² However, attempts were made at relatively early stages by the Dutch, German and Portuguese Full Members of the Article 113 Committee to exert their (rather sceptical) views on the issue of extending the scope of the CCP (interview NAT-15, Brussels 1997; EC-20, Brussels 1999).

discussion of the issue amongst the Permanent Representative was limited (interview NAT-23, Brussels 1999).

Even though the subject matter was not as cognitively complex as that of basic telecoms services, it was nevertheless one of the more technical ones on the IGC agenda, thus requiring discursive inquiry (*condition 2*). While negotiators were at ease with institutional and CFSP questions, they usually found the issue of Article 113 ‘tricky’ and to require ‘some pertinent trade-political background’, which most did not have.¹³ Hence, on the whole negotiators repeatedly lacked the requisite expertise to evaluate each others’ validity claims, which made genuine truth-seeking somewhat difficult.

During the pre-negotiations a mix of deliberation, rhetorical action and bargaining could be witnessed. The Commission, and especially Krenzler during his appearance in the Representatives Group, (largely) engaged in communicative action. This was the case, for example, regarding the main argument put forward in substantiating the proposed extension of Article 113. The Commission mainly argued that the scope of Article 113 should be interpreted in a dynamic way and that globalisation and changes in the world trade agenda – with increasing prominence of trade in services, intellectual property rights and investment – should be reflected in the EC’s external trade competence. That this argument, which was also made by the Belgian, Finnish and Swedish delegations, was used in a genuine deliberative way by the Commission has been asserted by negotiators themselves and been further corroborated by cross-interviews, in which colleagues maintained, for example, that Krenzler ‘really means what he says’ and that ‘he very much stands behind this argumentation because he is convinced of it on the merits of effective Community trade policy’ (interview EC-12, Brussels 1997). In addition, at this stage the Commission also refrained from painting an overly gloomy picture of the situation under mixed competence, thus abstaining from adding extra legitimacy to its arguments (c.f. Krenzler 1996).

The pre-negotiations were also characterised by a considerable amount of bargaining. The ambitious initial Commission proposal, which could be interpreted to imply the request for an external economic policy competence¹⁴, was rather meant as a bargaining strategy, from which it could later retreat to merely suggest an extension of Article 113 to services and intellectual property (interview EC-23, Brussels 1999). In addition, some of

¹³ With the exception of the Swedish (Gunner Lund), Finnish (Antti Satuli) and Belgian (de Schoutheete) representatives (interviews, Brussels EC-14, Brussels 1997; NAT-26, Brussels 1999).

¹⁴ This was the interpretation, for example, by the Bundesministerium für Wirtschaft (1996).

the Commission's arguing was rhetorical. For example, the Commission added some cheap legitimacy to its argumentation by pointing to enlargement and the increased difficulty to reach unanimous decisions under mixed competence. This argument is certainly a logical one, but as several Commission officials admitted it was not of real concern to the Commission, as it did not take more Member States to make mixed competence a problem in external trade negotiations. Instead, it came in rather handy that the IGC was about making the EU fit for enlargement (interview EC-13, Brussels 1997). In addition, the Commission said prior to the IGC that it did not seek new competences at the IGC. Once it decided to bring external trade onto the agenda, it then sold the Article 113 issue as a 'modernisation' or an 'updating' of the CCP. This had an element of rhetoric to it, which appeared to a number of national IGC Representatives as inconsistent and 'asking for new competencies in thin disguise' (Interview NAT-16, Brussels 1997; cf. Meunier and Nicolaidis 1999: 494).

Formal negotiations (sub-case 5)

From about mid-October 1996 the main problems and broad parameters concerning CCP reform were identified. As more formal negotiations began, the policy style further changed towards one characterised by bargaining. This change went together with modified conditions in terms of the negotiating infrastructure. The cognitive complexity of issues remained similar, but the reduced chance for experts, like Commission Director-General Krenzler, to come into the discussion further adversely affected *condition 2*.

Other conditions deteriorated more considerably. After a few months the Article 113 issue no longer posed a new problem on the agenda (*condition 1*). Preferences had been identified and positions formulated. IGC Representatives were thus less eager to listen to and learn from each others' arguments. Even more significantly, less time was now devoted to the issue (*condition 3*). As one official noted, 'when we discussed external policy for an hour, we spent 55 minutes on CFSP and five minutes on Article 113' (interview NAT-23, Brussels 1999). Under such circumstances there was hardly enough time for one *tour de table*, and certainly not enough to actually engage in truth-seeking and a deliberative debate about the pros and cons of reforming Article 113.

In addition, the issue became substantially politicised and was met by considerable countervailing pressures (*condition 4*), which took some time to ‘register’ in the Group, as Representatives increasingly got input from national capitals. As the new trade issues do not stop at borders, like issues of tariffs and quotas, but extend into the state and thus concern national laws and domestic regulation, they are thus also more politicised (cf. Smith and Woolcock 1999: 440-441). Countervailing forces also began to form in national capitals because of the ‘basic distrust by some Member States of the role of the Commission in representing the Community in international negotiations and keeping the Member States abreast of what is going on’ (Patijn 1997: 39). The reason for this basic distrust of the Commission can be found in a number of events in the past when the Commission negotiated without the necessary transparency vis-à-vis Member States (cf. Niemann 2006a: ch.3). In addition, there was considerable adverse bureaucratic politics/pressure from (senior) officials in several capitals who did not want to ‘hand over these dossiers to the Commission’ (interview NAT-15, Brussels 1997). All this made a genuine deliberation on the merits of reform extremely difficult due to very tight instructions given to the majority of IGC Representatives.

The IGC negotiations on the extension of Article 113 were predominantly characterised by rhetorical action as well as integrative and hard bargaining. As its quest was met by substantial scepticism from a considerable number of delegations, the Commission’s argumentation became increasingly rhetorical and strategic. It gradually added extra/false legitimacy to its argument concerning the changing world trade agenda by stating that mixed competence and unanimity limit the Community’s negotiating capacity in *all* situations (interview EC-9, Brussels 1997). Moreover, the Commission misrepresented negotiating realities by claiming that under unanimity and restricted delegation the Community would unavoidably be at a disadvantage because ‘no negotiator can do worthwhile deals with his hands tied behind his back’ (Brittan 1996).¹⁵

The reluctant Member States delegations, such as France, the UK, Spain, Portugal and Denmark also engaged in rhetorical/strategic action. For instance, they claimed that the Commission did not (always) represent the interests of the Community convincingly and that it often gave in too easily to the US, thus requiring Member States to ‘keep the Commission on a short leash’ (interview NAT-14, Brussels 1997). Even though some,

¹⁵ That the Community may actually have considerable leverage/bargaining power under mixed competence, especially when its collective position is closer to the *status quo* than its opponent, has been privately admitted by Commission officials. Also cf. Meunier 2000.

like the French, seem to have actually meant this, others admitted during interviews that this was used as a pretext, for example, in order to avoid shedding sovereignty in (services) areas in which international competition was feared or for ideological reasons (interview NAT-25, Brussels 1999). Quite a number of the reluctant Member States also resorted to hard bargaining. Some simply stated that they wanted to exempt a certain area from Community competence due to domestic sensitivities. Others like France and the UK on a number of occasions confined themselves to simply saying ‘no’ to an extension of Article 113 or making an extension conditional on the exemption of certain key areas *without giving any substantial reasons* (interview NAT-25, Brussels 1999). This clearly suggests that (good) arguments did not count for much at this stage and that it was more down to Member States’ self-interests and bargaining power.

The process towards the final outcome on this issue at the IGC can also be explained by (integrative and hard) bargaining. A sizeable group (which included powerful Member States like France, the UK and Spain) refused an outright transfer of competence. The most they wanted to go along with was a limited transfer of QMV and sole Commission representation in trade in services and intellectual property rights, albeit with a significant number of areas exempted. This was followed by logrolling (integrative bargaining) among delegations, in which each delegation conceded on issues that were of low priority to itself and of high priorities to other parties. This way the list of exceptions to an extension of Article 113 grew very long indeed. Eventually, the value-added of the text was doubted by the Commission (and a number of parties) who encouraged the Presidency to dismiss it. Instead of a laborious and complex agreement lacking ambition, it was decided to codify the (more straight-forward) lowest common denominator in the Treaty of Amsterdam. The new paragraph (5) in Article 133 enabled the Council to extend the application of Article 133 to services and intellectual property rights by unanimity without having to go through another IGC.¹⁶

Conclusions

The above analysis indicates that a narrow definition/conceptualisation of deliberation seems to be justified. Genuine (i.e. non-strategic) deliberation does exist and its analysis would be impeded using broader and less clear-cut conceptual lenses. In addition, a wider

¹⁶ The issue of extending the scope of the CCP later came up again during the Nice IGC and the Convention/IGC 2003-04 (cf. Niemann 2006a: ch. 3).

and more ambiguous conceptualisation of deliberation would make it hard to distinguish deliberation/communicative action in the Habermasian sense from concepts such as rhetorical action.

There does not appear to be any methodological ‘nostrum’ for studying deliberation processes. Instead scholars seeking to identify and investigate deliberation in the Council (or other forums) have to be prepared to invest considerable resources, especially when it comes to substantiating such processes. It seems that a mixture of different research strategies and techniques is required. The here employed mix of process tracing (put into practice by drawing on different techniques/sources and used along several specified indicators), the comparative method and exploring alternative explanations could be further complemented, for example, by making use of counterfactual analysis or by analysing speech act by speech act (in more fine-grained manner), although especially the latter would put even greater strains on scholars’ resources.

My empirical analysis suggests that most negotiations in the Council framework (broadly interpreted) are probably not *dominated* by deliberation. Strategic action – i.e. integrative and hard bargaining and variations of rhetorical action – seem to take the lion’s share under most circumstances. Yet, sub-case 1 has shown that, if the conditions are ‘right’, genuine deliberation may take over as the chief interaction mode and impact on outcomes. Also sub-cases 2 and 4 have indicated that deliberation still captures part of the action when the (hypothesised) conditions for communicative action are partly present.

This brings us to the conditions under which deliberation may prevail. First, my analysis supports the ‘multiple causality’ assumption, i.e. that a specific action mode can be induced by combinations of values on the different conditions. For example, sub-cases 3 and 5 show that negotiations dominated by strategic action may be accompanied by quite different distributions across conditions. Also, cases 2 and 4 indicate that a mix of deliberation and strategic action can be induced by rather varying distributions across conditions. As regards my provisional classification of conditions (in terms of ‘conducive’, ‘necessary’ and ‘sufficient’) the above analysis confirms that my conditions are (at least) conducive to deliberation, since they generally varied as hypothesised, i.e. we witnessed more deliberation when the conditions were present (cf. table 1). Case 1 also tentatively indicates that taken together the hypothesised conditions are sufficient for deliberation. Case 3 substantiates that condition 3 is not sufficient because the possibility for lengthy discussions alone could not bring about deliberation. The assumption that the

other three conditions individually are also not sufficient could not be analysed as none of them appeared in isolation. The presupposition that condition 3, condition 4 and one out of the first two conditions are necessary for deliberation could (also) not be probed sufficiently given the (ambiguous/narrow) distribution of conditions (cf. cases 3 and 4). Additional case studies would be needed to allow for a more conclusive probing of the conditions' salience.

Finally, in the Council framework (as in other forums and contexts), we can expect larger degrees of deliberation during pre-negotiations, which are often characterised by negotiators facing uncertainty and new problems (*condition 1*), the possibility of lengthy discussions due to lesser time pressures (*condition 3*) and weaker counter-pressures and lower levels of politicisation (*condition 4*). Second, we can also expect more deliberation at the official (i.e. working group) level, rather than the political (i.e. Council or European Council) level Council due to, generally, cognitively more complex issues along with the requisite expertise of negotiators (*conditions 2*), often greater potential for longer discussions, as a result of lesser time pressures (*condition 3*), and lower levels of politicisation (*condition 4*). Somewhat overlapping with, but not wholly contained by, the last two parameters, deliberation is more likely when negotiators engage in day-to-day decision-making than in history-making decisions, given the greater potential for the occurrence of the hypothesised conditions in everyday policy-making.

References

- Bourgeois, Jacques (1995). 'The EC in the WTO and Advisory Opinion 1/94: An Echternach Procession', *Common Market Law Review* 32: 763-87.
- Brittan, Leon (1996). 'New tactics for EU trade', *Financial Times* 11 November.
- Bundesministerium für Wirtschaft (1996), *Stellungnahme zu dem Papier GD I der EG-Kommission 'Regierungskonferenz – Außenwirtschaft: Warum muß der Artikel 113 angepaßt werden'*, EA1-11006/23, Bonn, 8.10.1996, Anhang (Argumentationspapier), 27.9.1996.
- Checkel, Jeffrey T. (2001). "Why Comply? Social Learning and European Identity Change", *International Organization* 55, 3: 553-588.
- Commission of the European Communities (1996), *External Economic Relations*, CONF/3890/96, Brussels, 25.7.96.
- Council (1996). *Outcome of Proceedings of Article 113 Committee (Services)*, Negotiating Group on Basic Telecoms – revised draft conditional offer of the Communities and Member states, Geneva, 13.11.96, including annex (EC schedule).

- Council (1995). *Outcome of Proceedings of Article 113 Committee/Services on 7 March 1995*, Doc_No. 5582/95 Limité, Council Secretariat, Brussels, 23 March 1995.
- Deitelhoff, Nicole and Harald Müller (2005). 'Theoretical Paradise – Empirically Lost? Arguing with Habermas', *Review of International Studies*, 31: 167-179.
- Dessler, David (1991). "Beyond Correlations: Towards a Causal Theory of War", in: *International Studies Quarterly*, 35: 337-355.
- Elgström, Ole, and Christer Jönsson (2000). "Negotiation in the European Union: bargaining or problem-solving", *Journal of European Public Policy* 7, 5: 684-704.
- Elster, Jon (1991). *Arguing and Bargaining in the Federal Convention and the Asemblée Constituyente*, WP No. 4, Center for the Study of Constitutionalism, University of Chicago.
- Eriksen, E., O. and J. E. Fossum (eds.) (2000), *Democracy in the European Union: Integration Through Deliberation?* London: Routledge.
- Gehring, Thomas 1999: Bargaining, Arguing and Functional Differentiation of Decision-making, in Joerges, C. and E. Vos (eds): *EU Committees*, Oxford: Hart.
- George, Alexander, and Timothy McKeown (1985). "Case Studies and Theories of Organizational Decision Making", in: *Advances in Information Processing in Organizations*, 2: 21-58.
- Gonzalez-Durantez, Miriam (1997). "WTO/GATS Negotiations on Basic Telecommunications – An Overview", *International Trade Law & Regulation*, 4: 135- 137.
- Haas, Peter (1992). 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization* 46: 1-35.
- Habermas, Jürgen (1981). *Theorie des kommunikativen Handelns. Handlungsrationalität und gesellschaftliche Rationalisierung*, Frankfurt/Main: Suhrkamp.
- Holzinger, Katharina (2001). "Kommunikationsmodi und Handlungstypen in den Internationalen Beziehungen", *Zeitschrift für Internationale Beziehungen*, 8: 243-286.
- Joerges, Christian and Neyer, Jürgen (1997). 'Transforming strategic interaction into deliberative problem-solving' *European Law Review Journal* 3: 273-99.
- Johnson, Michael (1998). *European Community Trade Policy and the Article 113 Committee*, Royal Institute of International Affairs, London.
- Keck, Otto (1995). „Rationales kommunikatives Handeln in den Internationalen Beziehungen“, in: *Zeitschrift für Internationale Beziehungen* 2, 1, 5-48.
- King, Gary, O. Keohane, Robert and Verba, Sidney (1994). *Designing Social Inquiry*. Princeton, New Jersey: Princeton UP.
- Krenzler, Horst-Günter (1996). 'Gemeinsame Handelspolitik: Die EU braucht eine starke Außenvertretung', *EU Magazin* 7-8: 18-21.
- Lewis, Jeffrey (1998). 'Is the "Hard Bargaining" Image of the Council Misleading? The Committee of Permanent Representatives and the Local Elections Directive', *Journal of Common Market Studies* 36: 479-504.
- Sophie Meunier (2000), 'What Single Voice? European Institutions and EU-US Trade Negotiations', *International Organization*, 54, 1, pp. 103-35.

- Meunier, Sophie and Nicolaïdis, Kalypso (1999). 'Who speaks for Europe? The delegation of trade authority in the EU', *Journal of Common Market Studies* 37: 477-501.
- Niemann, Arne (2006a). *Explaining decisions in the European Union*, Cambridge: Cambridge University Press.
- Niemann, Arne (2006b). 'Beyond Problem-Solving and Bargaining: Genuine Debate in EU External Trade Negotiations', *International Negotiation Journal* 11: 467-497.
- Niemann, Arne (2004). 'Between communicative action and strategic action: the Article 113 Committee and the negotiations on the WTO Basic Telecommunications Services Agreement', *Journal of European Public Policy* 11, 3: 379-407.
- Niemann, Arne (2000). *The Internal and External Dimensions of European Union Decision-Making: Developing and Testing a Revised Neofunctionalist Framework*, Ph.D. Thesis, University of Cambridge.
- Patijn, Michiel (1997). 'The Dutch Presidency', in European Policy Centre, *Making Sense of the Amsterdam Treaty*. Brussels, pp. 38-39.
- Pruitt, Dean G. (1983). "Strategic Choice in Negotiation", in: *American Behavioral Scientist*, 27, 2: 167-194.
- Ragin, Charles (1987). *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies*. Berkley, CA: University of California Press.
- Risse, Thomas (2000). "'Let's Argue!': Communicative Action in World Politics", in: *International Organization*, 54, 1: 1-39.
- Risse-Kappen, Thomas (1996). 'Exploring the nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the European Union', *Journal of Common Market Studies* 34: 53-80.
- Sauter, Wolf (1997). "International and EU Telecommunications Liberalisation", *Utilities Law Review*, 8, 3: 71-73.
- Schelling, Thomas C. (1960). *The Strategy of Conflict*, Cambridge, MA: Harvard University Press.
- Schimmelfennig, Frank (2001). "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union", in: *International Organization*, 55: 47-80.
- Shears, Mathew (1997). "International Liberalisation: the WTO and Implications for EU Markets and Regulation", *International Business Lawyer*, July/August.
- Smith, Michael and Woolcock, Stephen (1999). 'European Commercial Policy: A Leadership Role in the New Millennium?', *European Foreign Affairs Review* 4: 439-62.
- Stasavage, David (2004). "Open-Door or Closed Door? Transparency in Domestic and International Bargaining", *International Organization*, 58, 24: 667-703.
- Walton, Richard E., and Robert B. McKersie (1965). *A behavioral Theory of Labor Negotiations*, New York: McGraw-Hill.
- Weber, Max (1949). *The Methodology of the Social Sciences*, New York: Free Press.